

No sec. 194J TDS on sale of goods to stockiest below MRP by treating the differential amount as managerial fees

Summary – The High Court of Bombay in a recent case of Piramal Healthcare Ltd., (the Assessee) held that where assessee had received sale price from stockist but had not paid/credited any amount to stockist, question of invoking section 194J against assessee did not arise

Facts

- The assessee company was engaged in manufacture and distribution of drugs. It appointed one 'Z' under an agreement as its superstockist.
- In terms of the agreement, the assessee sold its manufactured drugs to 'Z' for its onward distribution in the open market.
- The Assessing Officer concluded that 'Z' was the manager of the assessee as the services rendered by 'Z' to the assessee was managerial in nature. Therefore, he concluded that the assessee was liable to deduct tax under the provisions of section 194J.
- On appeal, the Commissioner (Appeals) partly allowed the appeal. The Commissioner (Appeals) held that section 194J was applicable in respect of the payments received by the assessee from 'Z' as the services rendered by 'Z' was in nature of managerial services and would be covered by fees for technical services.
- On appeal, the Tribunal allowed the appeal filed by the assessee.
- On appeal:

Held

- Once it is accepted/admitted position that there is sale of drugs by the respondent to 'Z' and no amount is paid by the assessee to 'Z', there can be no occasion to apply section 194J. There has admittedly been no credit of any sum to the account of 'Z' in its books of account nor any payment made by the respondent either in cash or cheque or draft or any other mode. Where the sales of any goods are covered under the M.R.P. System, the M.R.P is fixed and the seller is entitled to sell the goods to a stockist at a price lesser than the M.R.P. as mutually agreed between the parties. In such a case, what should be the sale price or what should be the margin available to the stockist is entirely at the discretion of the parties. In the present case, the assessee has received the sale price at the rate fixed under the agreement. In such a case, where the assessee has received the amount of sale price, the question of the assessee deducting tax at source under section 194J does not arise, because the assessee is not making any payment to the stockist. Therefore, whatever be the margin made available to the stockist, so long as the assessee is not making any payment to the stockist,

the question of invoking section 194J against the assessee does not arise. Hence, there is no reason to entertain question raised by the revenue.